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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,658	12/28/2001	Grant C. Meyer		1807

7590 08/29/2003  
LANNY N. ENGLUND  
1472 Ashover Drive  
Bloomfield Hills, MI 48304

EXAMINER

PHAM, HUONG Q

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/034,658

Applicant(s)

MEYER, GRANT C.

Examiner

Huong Q. Pham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### *Specification*

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

For example, "anterior<sup>(pretibial)</sup> shell", "an upper tibia portion", "front and back portion", "lower ankle forefoot portion", "top and bottom" (claim 1), "upper flanges" (claim 2), "lower flanges" (claim 3), "external flanges" (claim 8). Applicant is advised to review the entire specification and provide proper antecedent basis for every term used in the claims.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Note that claims 1-8 include many terms which do not have proper support in the specification (note the comments relative to the objection to the specification above).

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Claims 1-8 are objected for the following reasons:

Note that the phrase " D-DAFO ( Deross-.....Orthosis) " ( claims 1, 8) , or " D-DAFO" ( claims 2-7) render the scope of the claim unclear. Applicant is advised to remove these recitations from the claims. The following terms lack proper antecedent basis: " said outer anterior shell" ( claim 1) , " said elastic strap" ( claim 6).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of Davies et al and Porcelli, and/or Nichols, and/or Bourque et al . As for claim 1, Wang teaches every claimed feature of claim 1 except for an anterior shell and a tongue. Davies et al teaches a tongue 12, Porcelli , Nichols, and Bourque et al teach an anterior members 23a (Porcelli ) , 13 ( Nichols), 42 (Bourque et al). In view of the teachings of Davies et al and Porcelli , and/or Nichols, and/or Bourque et al, it would have been obvious to an ordinary skill in the art at the time the invention was made to provide the brace of Wang with an anterior shell for protecting the front opening of the tibia , and with a tongue for protecting the upper part of the foot. The provision of a well known structure such as an anterior shell or tongue for a brace is only a matter of

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obvious engineering design choice, and therefore is not patentable from prior art. As for claim 2, note Figures 6-8 of Wang. As for claim 3, note pair of lower flanges 63 ( Figure 7) of Wang, or the lower flanges of Porcelli, or the lower flanges of Nichols. As for claim 6, note Figure 7 of Wang. Note that the use of rivet fasteners is very well-known in the art and therefore is not patentable over prior art.

Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of Davies et al and Porcelli, and/or Nichols, and/or Bourque et al, and further in view of Andrews. As for claim 4, while Wang does not teach an elastic strap, Andrews clearly teaches elastic strap 14. In view of the teaching of Andrews, it would have been obvious to an ordinary skill in the art at the time the invention was made to use elastic strap for the brace of Wang. Note that the use of elastic strap for brace is very well-known in the art.. As for claim 8, note the liner 11 of Davies et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (703) 305-5129. The examiner can normally be reached on 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on ( 703) 308 - 2698. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.



NICHOLAS D. LUCCHESI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

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